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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 03 034 54559

Office: VERMONT SERVICE CENTER

Date: JAN 10 2006

IN RE:

Petitioner:

Beneficiary:

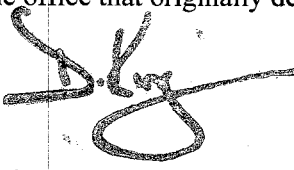
PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a financial strategist at Deutsche Bank Securities. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner's initial submission consists of samples of his work (such as Deutsche Bank strategy documents) and witness letters.

[REDACTED], now at the International Monetary Fund, taught at the Universidad Catolica Andres Bello when the petitioner was a student there, and was among the judges of the petitioner's thesis there. Mr. [REDACTED] describes the petitioner's student work:

[The petitioner] explored the underlying relationships between capital flows and other economic variables, emphasizing the role of interest rates in the capital flow movements. His study incorporated the innovative econometric technique of Vector Autoregression (VAR), which at the time that the study was performed was still under academic discussion and only mastered by a handful of economists in Venezuela. More important was the fact that [the petitioner] found a practical application for a concrete policy problem, an often difficult task when conducting economic research.

I was impressed that this revolutionary study was accomplished by such a young person. . . .

His work "Internet-Latin America Quiet Revolution" which provided a comprehensive guide of the impact of the Internet for Latin American equity investors, had a major impact in the field. His suggestions for reforms to the Brazilian securities markets have motivated changes in legislation. It is not an overstatement to say that [the petitioner's] work has already had an international impact.

Professor Jane Hughes, who taught the petitioner at Brandeis University, states:

[The petitioner] is a rare individual whose outstanding credentials have placed him ahead of other business professionals. . . . He started his involvement in international banking at the age of 21, working in the International Fixed Income division of [REDACTED] the third largest Venezuelan bank. At this time, only a few hundred individuals were involved in research and trading of Emerging Markets securities worldwide and the sector was still being formed. The fact that [the petitioner] was able to foresee the growing importance of international capital markets and managed to get a position of that caliber at that age is remarkable and place him apart from his peer group. . . .

I was impressed to see that [the petitioner] was hired to the Venezuela Office of ABN AMRO Bank just after finishing his BSc in Economics at Universidad Catolica Andres Bello. ABN AMRO Bank, the 4th largest international bank in Latin America, would usually require an MBA or several years of experience from its employees given their high academic and professional demands.

[REDACTED] who studied at Universidad Catolica Andres Bello while the petitioner was also a student there, and who at one time worked at Deutsche Bank where the petitioner works, is the Latin American Telecom Analyst at Citigroup Asset Management. Ms. [REDACTED] states:

[F]inding in-depth analysis of the developments occurring in international markets is extremely difficult and a job that only a few individuals around the world are in a position to perform. In my opinion, [the petitioner] certainly belongs to this group of individuals. . . .

Concretely, [the petitioner's] reports on the Telecommunications Industry in Latin America have facilitated my decision process in my advisory role to Citigroup Asset Management portfolio managers. During 2002, [the petitioner's] research pieces "Wireless Regulation: Driving the Sector in 2002" and "Tariff Increases but no Interconnection" correctly pointed out some of the pitfalls with Telecommunications legislation in Brazil. . . .

I consider that [the petitioner's] abilities not only help investors involved in Latin American markets such as myself, but he actually can be a link to the emerging group of Latin American entrepreneurs that are looking for avenues to access the international investment community.

Robert Berges, chief Latin America strategist at Merrill Lynch, discusses the general significance of "the development of Latin American economies," and asserts that the petitioner "is a professional with outstanding expertise in Latin America Economics. He states:

I have personally witnessed these abilities reading his research reports. For instance, he created a model portfolio encompassing all stock markets in Latin America, using the

Morgan Stanley Capital International Benchmarking Methodology. His pioneer report "Shaking the Latin Benchmarks" prepared investors involved in Latin American securities markets for the future reduction in stock trading volumes within the different countries in Latin America, allowing them to re-balance their positions ahead of time and reducing the stress associated with the expected changes. . . .

In March of 2000, [the petitioner] presented a description of the valuation asymmetry existing in the Brazilian Equity market between different share classes. . . . His ideas were both useful to [the] investment community and to the Brazilian regulators, who invited a member of Deutsche Bank to subsequent hearings at the Brazilian Congress. I am aware that the improvements in the final draft of the legislation have been warmly welcomed by international investors which traditionally hold minority stakes in their investments in Latin America. It is difficult for me to think of another professional at his level of seniority having the international recognition of [the petitioner]. . . .

I feel comfortable in stating [the petitioner] stands at the top among his peer generation.

We note that, while several of the letters discussed above indicate that the petitioner is responsible for impressive achievements, it is not clear that the initial witnesses were in a position to corroborate these claims.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's profession but finding that the petitioner had not established the national scope of his work, or that it is in the national interest for the petitioner, rather than a qualified U.S. worker, to carry on that work. The director concluded "the evidence provided does not persuasively demonstrate that the beneficiary's individual contributions as an equity research associate is beyond the capabilities of any number of trained professionals in his field."

On appeal, the petitioner submits several new letters. One of these letters, attributed to Albert Sebastian of Ironbound Capital LLC, is unsigned. Many of the basic assertions in this unsigned letter are present in other letters to be discussed below.

Mary F. Stober, president of Global Project Resources, LLC and chair of the International Committee at the New York Society of Security Analysts, states:

[The petitioner] published a series of reports that were highly received in the investment community, including "Shaking the Latin Benchmarks." This report provided a guideline to the many investors who used the Morgan Stanley Capital International Benchmark Index.

Later, he wrote "Brazil: the New Securities Laws-Buy ONs," a report that was part of an effort to defend the rights of foreign investors during discussions over new regulations in the Brazilian congress. Resulting legislation incorporated some of [the petitioner's] suggestions, thus supporting a legal base to protect millions of dollars invested by the United States in Brazil.

To corroborate the assertion that the petitioner's work affected Brazilian legislation, the petitioner submits a letter from [REDACTED] now executive president of the Brazilian Institute for Ethical Competition, who states:

I met [the petitioner] when he was working at Deutsche Bank's Latin America research division. At the time, I was a Member of the Brazilian Congress and part of the team drafting a legislative Bill that would improve the rights of minority shareholders. . . .

[The petitioner's] role in the initial steps of the legislative process . . . generated support for the amendment and thus provided a unique contribution to the discussion of the law in our Congress.

The approval of this Bill represented a major milestone in Brazilian shareholder history as it guaranteed close to par treatment between majority and minority investors.

Through the above statements, and others in the record, the petitioner has established that his role extends significantly beyond simply providing financial services to clients. The evidence indicates that the petitioner is well respected by important figures in top firms, and that his work has influenced financial policy at a national level. While many of the witnesses have worked directly with the petitioner, these interactions go beyond typical co-worker or supervisor/subordinate relationships; they tend to support the assertion that the petitioner has been particularly influential within his field.

The petitioner has since begun working at PricewaterhouseCoopers, LLP, where his task is to detect and deter fraud and malfeasance in the financial sector. Because the waiver request did not specifically rest on the presumption that the petitioner would remain at Deutsche Bank, and because the petitioner continues to work in his overall area of expertise, this change of employment is not disqualifying.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of endeavor, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the financial community recognizes the significance of this petitioner's work rather than simply the occupation in general. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.